

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ROOSEVELT REED,

Plaintiff,

v.

ELEANOR VERNELL, XANDIS  
PHILLIPS, NANCY HENDERSON,

Defendants.

NO. C14-5800 RJB-KLS

**REPORT AND RECOMMENDATION**  
**Noted For: April 24, 2015**

Before the Court is the Motion for Summary Judgment of Defendants Eleanor Vernell, Xandis Phillips, and Nancy Henderson. Dkt. 12. This 42 U.S.C. § 1983 lawsuit arises from *pro se* Plaintiff Roosevelt Reed's claims that Defendant unlawfully deducted amounts of money from his prison postage account. Dkt. 4. The undersigned recommends that Defendants' motion for summary judgment (Dkt. 12) be granted and Plaintiff's claims dismissed with prejudice as frivolous.

**FACTS**

In his complaint, Mr. Reed alleges that funds from his prison postage account were unlawfully subjected to deductions in violation of his due process rights under the Fifth and Fourteenth Amendments. Dkt. 4, p. 3. He also contends that the deductions were made

1 prematurely because they were made on February 7, 2012 and he was not released until April  
2 16, 2012. In his response to Defendants' motion, Mr. Reed states that he had "large amounts  
3 of funds deposited into his Postage Account in preparation of International Correspondence.  
4 Plaintiff changed his mind and decided to return the funds to the sender of funds which DOC  
5 Policy 200.000 IV Postage Subaccount C allows stating 'funds will only be returned to the  
6 sender of funds (Rev. 6/11).'" Dkt. 14, at 2.

8 Mr. Reed argues that Defendants were acting without authority when they took  
9 deductions from his postage account but does not dispute the facts contained in the declarations  
10 supporting Defendants' motion for summary judgment. According to Defendants, inmates in  
11 Department of Corrections (DOC) prisons maintain their funds in a DOC-managed trust  
12 account. Dkt. 12-1, Exhibit 1, Declaration of Dell-Autumn Witten, DOC Policy Program  
13 Manager, at 1. An inmate's trust account is comprised of the following sub-accounts:  
14 spendable account; savings subaccount; work release savings subaccount; postage subaccount;  
15 education subaccount; medical subaccount; and Community Services Revolving Fund (CSRF)  
16 subaccount. *Id.*, Witten Decl., Attachments A-D, DOC Policy 200.000, at Attachment 6.  
17 Funds are deposited into the subaccount designated by the sender; if no subaccount is  
18 specified, the funds are deposited into the spendable account. *Id.*, Exhibit 1, Attachments A-D.  
19 Deposits into inmate accounts are subject to deductions pursuant to RCW 72.09.480 and DOC  
20 Policy 200.000. See Exhibit 1, Witten Decl., Attachments A-D, Attachment 3.

23 Pursuant to RCW 72.09.480(2), any funds an inmate receives in addition to his wages  
24 or gratuities, and excluding settlements or awards from legal actions, are subject to deductions.  
25 The statute mandates the following deductions: five percent for the crime victims'  
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1 compensation account as provided in RCW 7.68.045; ten percent to a DOC personal inmate  
2 savings account; twenty percent for payment of legal financial obligations for inmates who  
3 have them; twenty percent for any child support owed under a support order; twenty percent to  
4 the DOC to contribute to the cost of incarceration; and twenty percent for any civil judgment  
5 for assault, if applicable. RCW 72.09.480(2).  
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7 Pursuant to RCW 72.09.480(7), the deductions required under RCW 72.09.480(2) do  
8 not apply to money received by the DOC on behalf of an inmate if the funds are designated for  
9 postage expenses. That money is deposited into the postage subaccount and “may only be used  
10 for the payment of postage expenses and may not be transferred to any other account or  
11 purpose.” RCW 72.09.480(7). However, incoming postage funds are subject to a twenty-  
12 percent deduction for existing DOC postage debt and any balance in an inmate’s postage  
13 subaccount upon the offender’s release from DOC jurisdiction is subject to deductions as  
14 outlined in RCW 72.09.480(2) and DOC Policy 200.000. RCW 72.09.480(7); *see* Exhibit 1,  
15 Witten Decl., Attachments A-D, at Attachment 6.  
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17 Between the months of January and July 2011, Mr. Reed’s then-girlfriend, Jane  
18 Gregory, deposited \$1,700.00 into his postage subaccount. Dkt. 12-2, Exhibit 2, Declaration of  
19 Daniel Lewis, DOC Trust Accounting Manager, at 2, Attachment A. On July 18, 2011, Mr.  
20 Reed attempted to send out \$700.00 from his postage subaccount back to Ms. Gregory. *Id.*,  
21 Exhibit 2, Lewis Decl., Attachment B, at 1. According to the “chrono notes” maintained by  
22 DOC staff in Mr. Reed’s Offender Management Network Information (OMNI) file, Mr. Reed  
23 told staff that he was trying to help Ms. Gregory with moving expenses and did not want  
24 deductions taken from the funds. After he realized that the postage subaccount was subject to  
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1 deductions on his release, he began trying to send the funds back to Ms. Gregory.

2 Superintendant Vernell sent an email to Mr. Reed via his counselor, advising him that pursuant  
3 to DOC Policy 200.000, he could not transfer money out of his postage account. *Id.*, Exhibit 2,  
4 Lewis Decl., Attachment C, entry dated July 26, 2011.

5         At that time, Policy 200.000, Attachment 6(IV)(C), provided that postage “[f]unds will  
6 only be returned to sender of funds.” Dkt. 12-1, Exhibit 1, Witten Decl., Attachment A, DOC  
7 Policy 200.000, Trust Accounts for Offenders, revised June 20, 2011. That provision was  
8 intended to allow return when there was an issue with the funds, or when the offender wanted  
9 to reject the incoming funds. Under RCW 72.09.480(7), money received for postage “may  
10 only be used for the payment of postage expenses and may not be transferred to any other  
11 account or purpose,” and DOC Policy reiterated that limitation. *Id.*, Attachment A. As such,  
12 the statute and policy were intended to allow funds to enter without deductions so that they  
13 could be used for the sole purpose of postage payment; the purpose was not for offenders and  
14 their friends and family to use the postage subaccount as a savings account for the temporary  
15 safekeeping of money to be withdrawn at their discretion. See RCW 72.09.480(7). The statute  
16 also envisioned that funds unused for postage purposes would be subject to the normal  
17 statutory deductions, not withdrawn shortly before release to avoid any deductions on those  
18 funds. *See* RCW 72.09.480(7).

19         Despite this information, on August 24, 2011, Ms. Gregory made another \$1,000.00  
20 deposit into Mr. Reed’s postage subaccount. Dkt. 12-2, Exhibit 2, Lewis Decl., at ¶ 5,  
21 Attachment D. DOC Trust Accounting Manager Dawn Thompson telephoned Mr. Reed and  
22 explained that any unused postage funds would be subject to statutory deductions of forty-five-  
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1 percent upon Mr. Reed's release. *Id.*, Exhibit 2, Lewis Decl., at ¶ 5, Attachment C, entry dated  
2 August 25, 2011. She asked Mr. Reed if he still wanted the money deposited and he said yes,  
3 and told Ms. Thompson that he would have Ms. Gregory call for further clarification. *Id.*,  
4 Exhibit 2, at ¶ 5, Attachment C, entry dated August 25, 2011. Ms. Gregory called Ms.  
5 Thompson on August 31, 2011, and stated that she and Plaintiff had researched the RCWs and  
6 were okay with the deductions. *Id.*, Exhibit 2, Lewis Decl., at ¶ 6, Attachment C, entry dated  
7 August 31, 2011. The deposit was allowed. *Id.*, Exhibit 2, Lewis Decl., at ¶ 5, Attachment E.

9       On December 20, 2011, while at Reynolds Work Release, Mr. Reed requested to return  
10 all of the funds from his postage account to Ms. Gregory and that request was denied. *Id.*,  
11 Exhibit 2, Lewis Decl., at ¶ 7, Attachment C, entry dated December 20, 2011; Dkt. 12-2,  
12 Exhibit 3, Declaration of Nancy Henderson, DOC Community Corrections Officer 3 at the  
13 Reynolds Work Release, at ¶ 3. At the time, DOC Policy provided that postage funds would  
14 only be returned to the sender of funds "upon approval," which was not granted in this  
15 instance. *See* Dkt. 12-1, Witten Decl., Exhibit 1, Attachment B, DOC Policy 200.000, revised  
16 November 1, 2011, at Attachment 6. Pursuant to RCW 72.09.480(7) and DOC Policy, the  
17 requirement was still that money received for postage could only be used for the payment of  
18 postage expenses and not be transferred to any other account or used for any other purpose. *Id.*  
19 Mr. Reed contends in his complaint that the request he made in December was initially  
20 approved by Ms. Xandis Phillips "the head CCO" at the Reynolds Work Release, but her  
21 approval was overruled by Superintendent Vernell. Dkt. 4, at 3.

24       On January 24, 2012, Mr. Reed completed an Inmate Banking System Check Request  
25 to send \$3,000.00 from his postage account to Ms. Gregory. Dkt. 12-2, Exhibit 2, Lewis Decl.,  
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1 at ¶ 8, Attachment F. On February 2, 2012, DOC staff explained to Mr. Reed and Ms. Gregory  
2 that DOC would allow the transfer of funds back to Ms. Gregory, but would treat the funds as  
3 if Mr. Reed were being released. *Id.*, Exhibit 2, Lewis Decl., at ¶ 8, Attachment C, entry dated  
4 February 2, 2012, Attachment F; Exhibit 3, at ¶ 4. Therefore, the funds would be subject to the  
5 applicable deductions under RCW 72.09.480(2). Accordingly, of the \$3,000.00 in Mr. Reed's  
6 postage subaccount, a five percent deduction would be taken for the crime victims'  
7 compensation account as provided in RCW 7.68.045; a twenty percent deduction would be  
8 taken for payment of Mr. Reed's legal financial obligations; and twenty percent would be  
9 taken for Mr. Reed's cost of incarceration, for a total of a forty-five percent deduction. As a  
10 result, fifty-five percent, or \$1,650.00, would be returned to Ms. Gregory. Pursuant to this  
11 arrangement, Mr. Reed completed a second Inmate Banking System Check Request in the  
12 amount of \$1,650.00, which was processed after being signed by Defendants Henderson and  
13 Phillips, and those funds were sent to Ms. Gregory. Dkt. 12-2, Exhibit 2, Lewis Decl., at ¶ 8,  
14 Attachment F; Exhibit 3, at ¶ 5.

17 On February 7, 2012, Mr. Reed filed Grievance Log ID 1204608 at Reynolds Work  
18 Release. Dkt. 12-2, Exhibit 2, Lewis Decl., Attachment G (letter from DOC dated April 10,  
19 2012 referring to grievance and appeal). Mr. Reed was advised on February 24, 2012 in the  
20 response to his grievance that the issue was not grievable because of Washington statutes  
21 regarding mandatory deductions on release. *Id.* Mr. Reed's appeal of that decision was denied  
22 on March 9, 2012. *Id.*, Exhibit 2, Lewis Decl., Attachment G. On April 16, 2012, Mr. Reed  
23 was released from the Reynolds Work Release facility and DOC total confinement. Dkt. 12-2,  
24 Exhibit 3, Henderson Decl., at ¶ 2.

1 Mr. Reed did not challenge the deductions until after he was readmitted to prison, on a  
 2 new conviction for first degree assault against Ms. Gregory. Dkt. 12-2, Exhibit 4, Declaration  
 3 of Katrina Toal, DOC Legal Secretary, Offender Management Network Information (OMNI)  
 4 Legal Face Sheet, at 8, 11. On June 2, 2014, Mr. Reed filed a tort claim (Tort Claim  
 5 #31080900) with the Washington Department of Enterprise Services, Office of Risk  
 6 Management. That claim was denied, with the determination that the “deductions taken were  
 7 and are appropriate to the circumstances and comply with applicable RCW and policy.” Dkt. 4  
 8 (Complaint), Exhibit 4, at 8-9.

#### 10 STANDARD OF REVIEW

11 The Court shall grant summary judgment if the movant shows that there is no genuine  
 12 dispute as to any material fact, and the movant is entitled to judgment as a matter of law. Fed.  
 13 R. Civ. P. 56(a). The moving party has the initial burden of production to demonstrate the  
 14 absence of any genuine issue of material fact. Fed. R. Civ. P. 56(a); *see Devereaux v. Abbey*,  
 15 263 F.3d 1070, 1076 (9<sup>th</sup> Cir. 2001) (en banc). To carry this burden, the moving party need not  
 16 introduce any affirmative evidence (such as affidavits or deposition excerpts) but may simply  
 17 point out the absence of evidence to support the nonmoving party’s case. *Fairbank v.*  
 18 *Wunderman Cato Johnson*, 212 F.3d 528, 532 (9th Cir.2000).

19 “If the moving party shows the absence of a genuine issue of material fact, the non-  
 20 moving party must go beyond the pleadings and ‘set forth specific facts’ that show a genuine  
 21 issue for trial.” *Leisek v. Brightwood Corp.*, 278 F.3d 895, 898 (9th Cir. 2002) (*citing Celotex*  
 22 *Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986)). The non-moving party may not rely upon  
 23 mere allegations or denials in the pleadings but must set forth specific facts showing that there  
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1 exists a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). A  
 2 plaintiff must “produce at least some significant probative evidence tending to support” the  
 3 allegations in the complaint. *Smolen v. Deloitte, Haskins & Sells*, 921 F.2d 959, 963 (9th Cir.  
 4 1990).

## 5 **DISCUSSION**

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 7 Mr. Reed contends that Defendants took deductions from his postage account without  
 8 due process of law. The Due Process Clause of the Fourteenth Amendment determines what  
 9 process is due before the state may deprive someone of a protected liberty interest. *See*  
 10 *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). The Due Process Clause confers both  
 11 procedural and substantive rights. *See Armendariz v. Penman*, 75 F.3d 1311, 1318 (9th Cir.  
 12 1996). Procedures created by a valid act of a state legislature and the legislative process satisfy  
 13 the requirements of procedural due process. *See Halverson v. Skagit County*, 42 F.3d 1257,  
 14 1260-61 (9th Cir. 1994), *as amended on denial of reh’g* (Feb. 9, 1995). The substantive  
 15 component of the Due Process Clause protects individuals from the arbitrary deprivation of  
 16 their liberty by government. *County of Sacramento v. Lewis*, 523 U.S. 833, 845-49 (1998).

### 18 **1) Procedural Due Process**

19 Under 28 U.S.C. §1983, a procedural due process claim has three elements: (1) a liberty  
 20 or property interest protected by the Constitution; (2) a deprivation of the interest by the  
 21 government; and (3) lack of process. *Portman v. Cnty. of Santa Clara*, 995 F.2d 898, 904 (9th  
 22 Cir. 1993). The Due Process Clause does not create substantive rights in property; the property  
 23 rights are defined by reference to state law. *Id.* Inmates have a property interest in their  
 24 incoming funds. *Wright v. Riveland*, 219 F.3d 905, 913 (9th Cir. 2000).  
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1       The Due Process Clause does not prohibit every deprivation by the state of an  
2 individual's property. Only those deprivations carried out without due process are actionable  
3 under 42 U.S.C. § 1983. *Halverson*, 42 F.3d at 1260. A deprivation pursuant to a duly  
4 authorized legislative action satisfies procedural due process requirements. *Id.* at 1260-61;  
5 *accord In re Metcalf*, 92 Wash. App. 165, 176, 963 P.2d 911 (1998) (when a legislative  
6 enactment is challenged, the legislative process provides all the process due). Where a  
7 deprivation results from an established state law or procedure, the existence of an adequate  
8 post-deprivation remedy is irrelevant. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433-  
9 37 (1982). "If a statute is not arbitrary, but implements a rational means of achieving a  
10 legitimate governmental end, it satisfies due process." *Kim v. United States*, 121 F.3d 1269,  
11 1273 (9th Cir. 1997) (quotation omitted).

12  
13       RCW 72.09.480 was first enacted in 1995 but has undergone a number of amendments  
14 since that time. *Anderson v. State, Dep't of Corr.*, 159 Wash. 2d 849, 856, 154 P.3d 220, 224  
15 (2007). The language regarding postage funds was added to RCW 72.09.480 pursuant to  
16 Substitute House Bill 1143, which was passed by the Washington Senate on April 13, 1999;  
17 passed by the Washington House of Representatives on April 23, 1999; approved by the  
18 Governor of Washington on May 14, 1999; and became effective July 25, 1999. Substitute  
19 H.B. 1143, 56th Leg., Reg. Sess. (Wash. 1999); *see* RCW 72.09.480(5) (1999). The  
20 Washington State Legislature is a legislative body that enacts laws for the State of Washington  
21 and there is nothing to suggest that the enactment of Substitute House Bill No. 1143 deviated  
22 in any way from the normal processes.  
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Thus, Mr. Reed received all the process to which he was due when DOC acted pursuant to RCW 72.09.480. Moreover, even an unauthorized intentional deprivation of property by a state employee or official does not constitute a due process violation under the Fourteenth Amendment if an adequate post-deprivation remedy is available under state law. *Hudson v. Palmer*, 468 U.S. 517, 534 (1984); *see, e.g., Zinermon v. Burch*, 494 U.S. 113, 129-32 (1990); *Parratt v. Taylor*, 451 U.S. 527, 538 (1981), *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327 (1986) (negligent loss of property or injury to property by state official does not violate due process so long as the state provides a meaningful post-deprivation remedy for the loss or injury).

The record reflects that adequate post-deprivation processes were available to Mr. Reed. Mr. Reed availed himself of DOC's grievance process. Washington State also provides a tort process to challenge property claims. *See* RCW 72.02.045 (state and/or state officials may be liable for the negligent or intentional loss of inmate property); RCW 4.92.090 (state liable for the tortious conduct of state officials). Mr. Reed filed a tort claim. These state processes have been found to be an adequate post-deprivation remedy for improper deductions. *Wright*, 219 F.3d at 918 (inmate has adequate post-deprivation remedy for refund through established prison grievance procedure or filing tort claim with the state). Thus, Mr. Reed has failed to state a claim for a violation of his procedural due process rights and the claim should be dismissed with prejudice.

## 2) Substantive Due Process

There is no evidence that the deductions levied on Mr. Reed's funds were arbitrary. The deductions dictated by statute – payment of the cost of incarceration, legal financial

1 obligations, and crime victims' compensation – are directly and rationally related to legitimate  
2 state interests in funding the criminal justice system and compensating crime victims. *See e.g.*,  
3 *Turner v. Safley*, 482 U.S. 78, 89 (1987). Mr. Reed provides no evidence to the contrary.

4 **B. Qualified Immunity**

5 Under the doctrine of qualified immunity, prison officials are “shielded from liability  
6 for civil damages insofar as their conduct does not violate clearly established statutory or  
7 constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*,  
8 457 U.S. 800, 818 (1982). A civil rights plaintiff opposing a claim of qualified immunity must  
9 establish the existence of a constitutional violation, clearly established law to support the  
10 claim, and that no reasonable official could believe their conduct was lawful. *Pearson v.*  
11 *Callahan*, 555 U.S. 223 (2009); *Saucier v. Katz*, 533 U.S. 194, 201 (2001); *Siegert v. Gilley*,  
12 500 U.S. 226, 232 (1991). Mr. Reed has failed to raise material issues of fact relating to the  
13 existence of a constitutional violation and therefore, it is not necessary to address the question  
14 of qualified immunity.  
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16 **C. 28 U.S.C. § 1915(g)**

17 A case is frivolous if it has no basis in law or fact. *See Andrews v. King*, 398 F.3d  
18 1113, 1121 (9th Cir. 2005). Under the Prison Litigation Reform Act (PLRA), a prisoner will  
19 be denied *in forma pauperis* status if he has filed three or more actions or appeals that have  
20 been dismissed as frivolous, malicious, or failing to state a claim. 28 U.S.C. § 1915(g); see 28  
21 U.S.C. § 1915(e)(2).  
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23 Defendants contend that Mr. Reed's claims are frivolous because they have no basis in  
24 fact or law and he was told repeatedly that his postage funds were nontransferable and would  
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1 be subject to deductions upon his release. Despite this information, he continued to have Ms.  
2 Gregory deposit large amounts of money into his postage subaccount. Mr. Reed was also  
3 aware of and began to pursue his appropriate state remedies, but apparently abandoned those  
4 pursuits in favor of suing Defendants in federal court. The undersigned concludes that Mr.  
5 Reed's claims are without merit and are frivolous.  
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### 7 CONCLUSION

8 Based on the foregoing, the undersigned recommends that Defendants' Motion for  
9 Summary Judgment (Dkt. 12) be **GRANTED**; and that Plaintiff's claims against Defendants  
10 be **dismissed with prejudice**. It is further recommended that the dismissal count as a strike  
11 under 28 U.S.C. § 1915(g).  
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13 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
14 Procedure, the parties shall have fourteen (14) days from service of this Report to file written  
15 objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of  
16 those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985).  
17 Accommodating the time limit imposed by Rule 72(b), the Clerk is directed to set the matter  
18 for consideration on **April 24, 2015**, as noted in the caption.  
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20 **DATED** this 6th day of April, 2015.

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23 Karen L. Strombom  
24 United States Magistrate Judge  
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